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SUMMARY OF ENGLISH CASES.

MOUNTAIN & CO. *v.* RUMERE, LTD., (1948) 2 All.E.R. 482 (C.A.) reversing (1948) 2 All.E.R. 144.

Practice—Action commenced by executrix of deceased proprietor in the firm name under which she continued the business—Substitution of executrix as plaintiff—Permissibility—R.S.C., Order 16, *rule* 2.

The late Alexander Mountain carried on business in the name of Alexander Mountain & Co. and in the course of that business deposited a quantity of steel tubing with defendants. He demanded back this tubing but difficulties arose and an action was begun for damages for detinue or alternatively conversion. The action was commenced describing Alexander Mountain & Co. as plaintiff although Mr. Mountain who was the sole owner of the business was dead at the date of the issue of the writ. When the plaintiff's solicitors discovered that the business had been carried on by Mr. Mountain without any other partner they applied for leave to amend the proceedings by substituting for the description of the plaintiff "Alexander Mountain & Co." the words "Doris Mountain Widow, executrix of Alexander Mountain deceased."

Held, that the case can properly be treated as one of misnomer and the writ allowed to be amended by substituting the executrix as plaintiff.

(1920) 2 Ch. 24 (26), distinguished.

BRITISH CELANESE, LTD. *v.* MONCRIEFF, (1948) 1 Ch. 564.

Master and servant—Agreement that inventions by servant should become sole property of master—Termination of employment releasing employee of his duties under the agreement—Effect—Right of employer to have the patents vested in him.

Where there is an express provision in an agreement that inventions by an employee doing research work for his employer should become the employer's sole exclusive property, the employee will become in effect the trustee of the inventions and he will be under a continuing obligation notwithstanding the termination of the service agreement and his "duties" thereunder, to take all necessary and appropriate steps at the employer's expense to vest the invention in the employer by applying or enabling the employer to apply, for patents in foreign countries as the employer desired so that these should enure for the benefit of the employer or his nominees.

QUAINTWAYS RESTAURANT LTD. *v.* BUDD, (1948) 2 K.B. 231.

Rationing order—Provision specifying quantity of cheese or fat that may be "used" per person per meal served in or by the catering establishment—Processing of excess quantity to prevent their deterioration—If "using" constituting offence.

The amount of fats and cheese which may be used during a particular rationing period in a catering establishment shall not exceed a specified amount per person per meal served in or by the establishment. A registered catering establishment processed quantities of accumulated stock of fat and cheese. In a prosecution for use of excess quantity of the rationed articles it was contended that "used" meant only "consumed" in the catering establishment by the persons served with meals.

Held, the word "used" must be given its ordinary meaning and the rationing order prohibits the use of fats or cheese in the restaurant beyond the specified amount for any purpose. Accordingly the catering establishment were guilty of offences against the rationing order.

LANGFORD PROPERTY CO., LTD. *v.* ATHANASSOGLOU, (1948) 2 All.E.R. 722 (C.A.).

Rent Restrictions Acts—Tenant having home in country and sleeping for two nights in a week in a flat in London when he stayed for business—If entitled to resist claim for possession by landlord of flat as being in personal occupation.

There is nothing in the Rent Restrictions Acts to prevent a tenant having more than one home. His business may require him at different times in the week or different times in the month to be in different parts of the country, and there is nothing to prevent him having a home in those different places. Where the tenant of a flat in London had a home in the country but slept at the flat whenever he required to do so for the purposes of his business (on an average twice a week) but rarely had any meal in the flat, it cannot be said that the tenant was not in personal occupation of the flat. Accordingly he can resist his landlord's claim for possession.

CHAMPANHAC & CO., LTD. *v.* WALLER & CO., LTD., (1948) 2 All.E.R. 724 (K.B.D.).

Sale of goods—Sale by sample "with all faults and imperfections"—Goods not up to sample—Effect.

Where there is a sale by sample the inclusion in the contract of the words "with all faults and imperfections" means that, providing the bulk corresponded in type and quality with the sample, it would be accepted with whatever faults and imperfections it had. Where in respect of such a sale of a quantity of Government surplus baloons it was found on delivery that the material was perished and unmerchantable, the vendor is liable for damages for breach of warranty if the buyer has not rejected the goods. The measure of damages is the difference in value between the goods as they were and the value which they would have had had they complied with the warranty. The sellers are also liable for reasonable loss of profits which the buyers have sustained by reason of having lost the contract for re-sale of the baloons.

HART *v.* GRIFFITHS-JONES, (1948) 2 All.E.R. 729.

Tort—Negligent driving—Death of child in fatal accident—Damages—Loss of expectation of life—Assessment in terms of money—Tests—Funeral expenses—When can be allowed for.

Where as a result of negligent driving by the defendant a fatal accident occurred in which the plaintiff lost his little girl of four ; in a claim for damages,

Held, the measure of damages for loss of expectation of life is in effect the loss of prospects of a happy life. In assessing damages the fact that the child had to pass the dangers of childhood should be taken into account. The difference in the value of the £ in 1946 and that in 1941 (when 1941 A.C. 157 was decided) must also be borne in mind.

The cost of embalming the body is properly included in a claim for funeral expenses, but not the price of a monument.

LANCASTER *v.* LONDON PASSENGER TRANSPORT BOARD, (1948) 2 All.E.R. 796 (H.L.).

Master and servant—Linesman injured by negligent driving of trolley bus driver—Common employment—Defence not available.

In an action for injuries sustained by a linesman working on the platform of a tower waggon repairing the overhead wires which supplied electric power for the master's trolley buses through the negligence of the driver of one of the trolley buses, the defence of common employment was raised.

Held (Lord Porter and Lord Du Parcq dissenting) : The trolley buses and the possible carelessness of their drivers did not constitute a special risk to the linesman, but the risk was a general risk of the highway and therefore he was not in common employment with the driver of the trolley bus. The master was liable for damages.

1947 A.C. 368, distinguished ; 1948 A.C. 79, applied and (1947) 2 All.E.R. 267 (C.A.), reversed.

VICTORIA LAUNDRY (WINDSOR), LTD. *v.* NEWMAN INDUSTRIES, LTD., (1948) 2. All.E.R. 806 (K.B.D.).

Contract—Contract to deliver a boiler to plaintiff—Delay in delivery—Damages—Loss of profits which could have been earned by plaintiff—When can be included in.

Sellers who have contracted to deliver a boiler for plaintiff would not be liable for the payment of damages for loss of profits unless there were evidence before the Court that the special purpose of this boiler (for extending existing laundry business of plaintiff) was drawn to their attention and that they contracted on the basis that delay in the delivery would make them liable to payment of loss of profits.

PHILLIPS *v.* DALZIEL, (1948) 2 All.E.R. 810 (K.B.D.).

Emergency legislation—Price control—Price in excess of controlled price marked on box containing foot-wear—" Offer to sell "—If constituted making the shopkeeper liable for contravention of Price Control Act.

In view of the definition in Goods and Services (Price Control) Act, 1941, section 20 that, " References to offer to sell goods includes references to a notification by a person for the price proposed by him for a sale of goods ", where a foot-wear merchant has marked the prices on the boxes containing shoes, that is sufficient evidence of offer to sell the shoes.

(1943) 1 All.E.R. 315, distinguished.

FOX *v.* HUNTER-PATERSON, (1948) 2 All.E.R. 813 (K.B.D.).

Landlord and tenant—Letter from landlord's agent to tenant's agent that " failing tenant's settling the matter this week we have instructions to take proceedings for possession and damages" —Valid determination of tenancy at will.

In respect of a tenancy at will the agents of the landlord wrote to the agents of the tenant thus: "Failing your client's settling this matter satisfactorily this week we have instructions to take proceedings against her for possession and damages."

Held, the letter was an unambiguous and valid determination of the tenancy at will.

RE LILLY'S WILL TRUSTS, (1948) 2 All.E.R. 906 (Ch.D.).

Will—Construction—Investments securities for money—If includes proceeds of life insurance policies.

Where there is a bequest of all personal property other than "investments securities for money or leasehold property" the exception refers to stock exchange investments and securities like debentures but does not include the proceeds of life insurance policies which will therefore pass under the bequest.

DENNIS REED, LTD. *v.* NICHOLLS, (1948) 2 All.E.R. 914 (K.B.D.).

Contract—Agreement to pay commission on introduction of a person able, ready and willing to purchase defendant's house—Plaintiff finding a person willing to purchase—Right to commission—If must prove that he had the money also at that time.

Where there is an agreement to pay commission to the plaintiff on introduction of a person able, ready and willing to purchase the defendant's house, it is sufficient for the plaintiff who had found such a person to prove that if the vendor had been ready and willing to carry out the contract the purchaser could have found at the proper time the necessary money to perform his obligation. "Ability" does not depend upon whether the purchaser has the money in hand at the time. What the event is which entitles the agent to commission depends on the contract in the particular case.

BALL AND ANOTHER *v.* LONDON COUNTY COUNCIL, (1948) 2 All.E.R. 917 (K.B.D.).

Tort—Negligence—Landlord installing new boiler—Tenant's daughter injured by explosion—Liability.

A landlord who has installed a new boiler which lacked a safety valve is liable in negligence to the tenant for damages for injuries caused to his daughter by an explosion of the boiler, where the condition of the boiler was known or capable of being known to the landlord. The landlord will be liable even though the boiler was put in gratuitously without extra charge. The duty of the landlord depends on the law of Torts and not of Contract. It is a duty that is owed to the persons who, in the ordinary course of human life, would use the things.

BENNET *v.* MILLET, (1948) 2 All.E.R. 929 (K.B.D.).

Contract—Agreement to pay commission on introduction of "purchaser able and willing to complete" purchase—Vendor refusing to complete sale after agent has found a purchaser—Liability for commission.

In pursuance of a contract that in the event of an agent introducing a purchaser who is able and willing to complete the transaction (the sale of a house belonging to the defendant) the plaintiff introduced such a purchaser but the defendant refused to complete the sale and also contended that the plaintiff was not entitled to commission unless the purchaser actually completed the purchase.

Held, the plaintiff was entitled to the commission as he had introduced a purchaser who is able and willing to complete the transaction.

WARREN *v.* HENLYS, LTD., (1948) 2 All.E.R. 935 (K.B.D.).

Master and servant—Vicarious liability of master for acts of servant—Limits—Threat by customer to report employee to his master—Assault by employee—Liability.

Plaintiff purchased some petrol in a garage and the garage assistant incensed the plaintiff by his incivility and violent language. Plaintiff called in a constable who soothed matters to some extent and when the constable was returning to his car, the garage assistant asked if plaintiff was going to report him to the firm and being told " yes " struck the plaintiff who then sued the firm.

Held, the act of the employee was personal retribution for something which he thought would affect him personally. The act cannot be deemed to be done in the course of his employment, it not being an act of a class which the employee was authorised to do or a mode of doing an act within that class.

WRAGG *v.* LOVETT, (1948) 2 All.E.R. 968.

Contract—Estate agent—Authority to sell house—If agent authorised to make particular contract.

Where a vendor merely authorises a house agent to " sell," at a stated price he must not be taken to be authorising the agent to do more than agree with an intending purchaser the essential term, *i.e.*, the price. The making of a contract is no part of an estate agent's business, and, although, on the facts of an individual case, the person who employs him may authorise him to make a contract, such an authorisation is not lightly to be inferred from vague or ambiguous language.

RE GILLSON, (1948) 2 All.E.R. 990 (C.A.).

Appeal—Several parties with precisely the same interests and precisely the same arguments —Costs—Practice is to allow only one set of costs.

When appeals are brought and there are several parties with precisely the same interest and precisely the same arguments who below may have been separately represented, it is the duty of the solicitors concerned to do everything possible to avoid unnecessary costs in the Court of Appeal. Where parties with precisely the same arguments come up to the Court of Appeal and three sets of costs are incurred, while with a little good will and with a desire to avoid multiplication of costs only one set of costs would have been incurred, the practice is to allow only one set of costs, certainly where costs are being charged on residue, for instance, or on a fund the persons interested in which either are absent or are infants and therefore are not in a position to consent.

COMMERCIAL STRUCTURES, LTD. *v.* BRIGGS, (1948) 2 All.E.R. 1041 (C.A.).

Income-tax Act (1918), section 125—Additional assessment if surveyor " discovers" under-assessment—Mistake as to the law applicable to facts—Discovery—If permits additional assessment.

On the plain reading of section 125 of the Income-tax Act if the surveyor discovers that a person chargeable has been under-charged in the assessment an additional assessment can be made. It is immaterial whether the discovery is based on the ascertainment of the correct law applicable to the facts and circumstances or whether it is the ascertainment of some new fact or circumstance.

MONARCH STEAMSHIP COMPANY, LTD. *v.* KARLSHAMNS OLJEFABRIKER AND OTHERS, (1949) 1 All.E.R. 1 (H.L.).

Contract—Breach—Damages—Charterparty—Unseaworthiness of ship—Delay in voyage—Outbreak of war making it impossible for ship to complete voyage—Transhipment of cargo to neutral ship for completing voyage—Cost of—If recoverable as damages—Damages —If remote.

A shipowner ought to have foreseen that within the course of a contemplated voyage, even if protracted, a war would be likely to occur, or if it did, that the carriage of goods to the stipulated range of ports would be prohibited. Where owing to the unseaworthiness of the ship there has been considerable delay and on the outbreak of war the ship had to be diverted by the Order of the Admiralty, the costs of transhipping the goods to a neutral ship for completion of the voyage can be recovered from the owners of the ship as damages for breach of contract. The cost of transhipment was the direct and natural consequence of the breach in the circumstances.

The question whether damage is remote or "natural" and direct can in general only be decided on a review of the circumstances of each special case.

BISHOPSGATE MOTOR FINANCE CORPORATION, LTD. *v.* TRANSPORT BRAKES, LTD., (1949) 1 All.E.R. 37 (C.A.).

Sale of goods—Sale by ostensible owner in market overt—True owner—When can get sale set aside.

A sale in market overt according to the usage of the market, to one who takes in good faith and for value without notice confers a good title on the buyer. This beneficial rule of common law applies not only to open markets created by grant or prescription but also to open markets authorised by statute. When the Legislature authorises the holding of a market it must be taken to intend to attach to it all the privileges attaching to a market by grant or prescription. If the true owner seeks to set aside a sale on the ground that it was not in accordance with the usage of the market, the burden is on him to show it.

The fact that goods are sold not by an auctioneer, but by a dealer or the apparent owner is also no ground for setting aside the sale, unless, indeed, the usage of the market only allows sales to be made by auctioneers.

Where a finance company allowed the hirer to have the motor car and take the registration book of the car (the log book) in his own name and the hirer sells the car in market overt, the financing company cannot have the sale to an innocent purchaser set aside.

LAUDER *v.* LAUDER, (1949) 1 All.E.R. 76 (C.A.).

Husband and wife—Sulking by husband—When amounts to cruelty.

A husband's conduct in deliberately and persistently sulking, causing thereby injury to the wife's health, constitutes cruelty entitling the wife to a decree for dissolution of marriage.

Per Singleton, L. J., dissenting.—There was not such a deliberate course of conduct on the part of the husband which amounted to cruelty. Though the husband could be regarded as inconsiderate at times he cannot be held to have been guilty of cruelty in law. A husband and wife ought to take each other for better or for worse.